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June 14, 2013

VIA - ECF

Honorable Ramon E. Reyes, Jr.
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Wise, et al. v. City of New York, et al.; 12-cv-1823 (ENV)(RER)

Your Honor,

I represent the plaintiffs in the above-referenced matter along with Michael Hueston, Esq. and Javier Solano, Esq. I write to provide the Court with a status report in anticipation of the parties' June 18, 2013 conference that plaintiffs believe will have great bearing on the case.

At P.O. Monderine's deposition, she was confronted with police records (consisting of laboratory and detective reports) that stated that the alleged firearm the defendants recovered from the Wise's home had no serial number and was an obvious imitation pistol that could not be loaded or fired. These records directly contradicted the arrest reports and property voucher where it listed a firearm serial number. In an attempt to explain the contradiction, P.O. Monderine testified that it was her practice, or a practice in the precinct, to obtain serial numbers from the precinct and assign them to firearms without serial numbers. She maintained this position even when confronted by the fact that no subsequent police reports used the supposed assigned serial number.

As a result, plaintiff served a demand that the defense produce any and all documents or information from the 101st Precinct of the NYPD, concerning assigning serial numbers to recovered firearms as testified to by P.O. Monderine during her June 6, 2013 deposition.¹ We believe the discovery regarding this issue is critical because it now appears that the defendants placed a false serial number on the imitation pistol to falsely arrest and prosecute the plaintiffs.

¹ Plaintiffs also made a discovery demand for any and all DD5s that were prepared by or at the direction of defendant Sgt. Matthews as testified during his deposition that he reviewed this information prior to appearing at his deposition.

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Also troubling, is the fact that the NYPD Patrol Guide calls P.O. Monderine's testimony into serious question. Patrol Guide 218-23 governs the processing of firearms and firearm-related evidence by the New York City Police Department. It makes no mention of the alleged process of assigning serial numbers. In fact, it instructs the opposite, stating "If there is no serial number or the serial number is defaced, write 'no/defaced serial number' (e.g., Glock pistol no/defaced serial number, Crossman air/CO2 pistol no/defaced serial number, etc.)."

Accordingly, plaintiffs anticipate discussing these issues at length at the upcoming conference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M.P. Kushner', with a long horizontal flourish extending to the right.

Michael P. Kushner, Esq.

Cc: A.C.C. Melanie Speight, Esq. (By ECF)
Attorney for Defendants